

**Testimony of
James A. Bair
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**Before the
House Government Reform Committee
Subcommittee on Energy & Resources**

**On the question
*Methyl Bromide: Are U.S. Interests Being Served
by the Critical Use Exemption Process?***

February 15, 2006

Thank you Mr. Chairman and members of the Subcommittee. I am Jim Bair, vice president of the North American Millers' Association. NAMA is the trade association representing 48 companies that operate 170 wheat, oat and corn mills in 38 states. Their collective production capacity exceeds 160 million pounds of product each day, more than 95 percent of the total industry production.

I am also vice chairman of the Crop Protection Coalition.

Background

In Congressional hearings and briefings over the years, grain milling executives have discussed with you how methyl bromide is used to meet government regulations, and consumers' expectations, for clean and wholesome food.

They have testified that methyl bromide is easily the most technically and economically effective tool available to protect grain processing facilities and the food produced in them against insect pests.

They have described how, even in advance of the Montreal Protocol phase-out, the industry cut its usage of methyl bromide by more than 60 percent over the last decade.

Why all the fuss?

Mr. Chairman and members of the subcommittee, I'd like to start by stating what the controversy over methyl bromide is about, and what it is not about. In my opinion, it is not about a problem of significant environmental consequence. According to the EPA website:

- "Anthropogenic (man-made) methyl bromide has contributed a total of about 4% to ozone depletion over the past 20 years. Of this, about 2.5% can be attributed to agricultural fumigation activities."
- "The MBTOC (United Nations Methyl Bromide Technical Options Committee) recommendation to approve 35 percent of the US 1991 baseline for a critical use exemption represents about 0.4 percent of the ozone depleting potential from all ozone depleting substances in all countries when the Montreal Protocol was first negotiated in 1987."
- "Further, the 35 percent figure represents only 1.5 percent of ozone depleting potential caused by all ozone depleting substances in 1989 in the US."

In short, the world is close to zero in its emissions of man-made methyl bromide; so close that any additional incremental gains will be extraordinarily difficult, and expensive, to achieve.

Accelerated Phase-out Schedule for Class I Substances

	CFCs	Halons	Carbon Tetrachloride	Methyl Chloroform	HBFCs	Methyl Bromide
1994	25%	0	50%	50%	100%	100%
1995	25%	0	15%	30%	100%	100%
1996	0	0	0	0	0	100%
1997	0	0	0	0	0	100%
1998	0	0	0	0	0	100%
1999	0	0	0	0	0	75%
2000	0	0	0	0	0	75%
2001	0	0	0	0	0	50%
2002	0	0	0	0	0	50%
2003	0	0	0	0	0	30%
2004	0	0	0	0	0	30%
2005	0	0	0	0	0	0

Source: US EPA

What it is, is an agenda-driven and highly politicized process whereby the fate of our Nation's interests with respect to this issue will be determined by individuals from foreign countries unaccountable to U.S. taxpayers.

Montreal Protocol meetings

Mr. Chairman, the parties to the Montreal Protocol process possess an unhealthy passion for secrecy and undemocratic decision-making. That is irrational, unfair to US farmers and food processors and does not resemble good policy-making as we know it here in the U.S. It begins with the selection of the meeting locations where the Montreal Protocol negotiations will occur.

For instance, the annual meeting of the parties in 2003 was held in Nairobi, Kenya – according to the U.S. State Department one of the most dangerous cities in the world. A city so dangerous that the U.S. embassy evacuated its staff due to terrorist activities.

The 2004 meeting was scheduled for Thanksgiving week and the critical day of negotiations was set for Thanksgiving Day. The 2006 working group discussions have been scheduled over our Independence Day.

Mr. Chairman and members of the subcommittee, much has been made of the fact that the US has the largest critical use program. Therefore it only makes sense for the meetings to be scheduled at a location and on a date that is reasonably convenient for representatives of CUE holders to participate. The US government should not agree to meetings that force its citizens to choose between personal safety considerations and representing their business interests; nor should Americans have to pick between spending the most American of holidays with family or representing their business interests.

As if that were not enough, the U.S. is the largest financial supporter of the Montreal Protocol activities. For 2003-05, the so-called Multilateral Fund of the Protocol was funded at \$573 million. It is an outrage that U.S. taxpayers provided about 25 percent of that money to fund activities that threaten our economic wellbeing.

Further, the substantive negotiations take place behind closed doors. I personally have attempted to sit in on such sessions as a mere

observer, only to be kicked out of the room.

American agriculture is justifiably skeptical about receiving fair treatment from agricultural competitors of the US who are not likely to give up this competitive advantage that has been handed to them.

The CUE process

A brief explanation of how the CUE process works may be useful.

1. Each summer methyl bromide user groups submit detailed requests to the EPA. These requests are two and a half years in advance of the calendar year for which the request is made.
2. Next, the US government analyzes those grower and industry CUE requests, and they are rolled into one package that is called the US Critical Use Nomination, or CUN. The US government makes cuts in the requested amount at this time. The US government sends this CUN package to the Parties to the Montreal Protocol.
3. The Parties, based on recommendations from the Technical and Economic Assessment Panel and the Methyl Bromide Technical Options Committee, approve an amount for each sector that may include an additional cut.
4. The US EPA then issues a final rule stating the actual amount of the fumigant allowed for each industry sector, which may include a third cut.

It is important to note that to each of the cuts described we have no right of appeal.

The food processing users of the compound have voluntarily cut their request from roughly 612,000 kg in 2005 down to 501,000 kg in 2008, a reduction of 18%. But the US government has further cut that down to 363,000 kg for 2008 for a total cut of 41%.

Methyl Bromide Critical Use Exemption Mills & Food Processing Uses				
	2005	2006	2007	2008
	(kilograms)			
Industry Request	612,576	603,505	586,722	501,560
US Nomination	536,328	461,768	401,889	363,952
Approved by Parties	483,000	461,758	401,889	TBD

After the Parties approve an amount, the US EPA, in implementing the CUE may make yet another cut, as they did to us for 2006 when the final allocation was published with another cut of 15%.

The arbitrary cuts by the US EPA and the additional cuts by the Parties to the Protocol penalize this industry for honest participation in the process. Some might wonder, if arbitrary cuts are going to be made, why not 'pad' our CUE request so that we end up getting an amount closer to what we truly need. We have not done that.

Further, when my industry attempts to experiment with alternatives those tests are reflected in our final allocation. That is, such an experiment may not have been successful other than adding to the body of knowledge about that particular alternative. But the US EPA counts that as an event that proves the effectiveness of that alternative. Again, what incentive do we have to experiment if our tests are used against us in the review of our CUE?

Following is a list of the members of the Methyl Bromide Technical Options Committee who review and make recommendations about the US nomination. It includes people from countries:

- who are direct competitors of US food and agriculture and are therefore unlikely to willingly surrender the competitive advantage that has been handed to them,
- that have no significant agriculture or food processing industries and therefore have never used much methyl bromide,
- with significant structural differences in their economies that

- provide competitive advantages over US processors, and
- that possess an antagonistic and, we believe, pervasive anti-United States attitude.

Methyl Bromide Technical Options Committee

Co-chairs

Jonathan Banks, Consultant, Australia
 Nahum Marban Mendoza, Autonomic University of Chapingo, Mexico

Members

Alessandrio Amadio, UNIDO, Italy
 Marten Barel, Consultant, Netherlands
 Chris Bell, Central Science Laboratory, UK

Antonio Bello, Centro de Ciencias Medioambientales, Spain
 Mohamed Besri, Institut Agronomique et Vétérinaire Hassan II, Morocco

Cao Aocheng, Chinese Academy of Agricultural Sciences, China
 Fabio Chevarri, IRET-Universidad Nacional, Costa Rica
 Ricardo Deang, Consultant, Philippines
 Patrick Ducom, Ministère de l'Agriculture, France
 Hodayah Finman, US EPA, US

Volkmar Hasse, GTZ, Germany
 Saad Hafez, University of Idaho, US
 Rick Keigwin, US Environmental Protection Agency, US
 George Lazarovits, Agriculture & Agrifood Canada, Canada
 Michelle Marcotte, Marcotte Consulting Inc., Canada

Cecilia Mercado, UNEP DTIE, France
 Melanie Miller, Consultant, Belgium
 Andrea Minuto, Agroinnova Università Torino, Italy
 Mitsusuda Mizubuchi, MAFF, Japan

Mokhtarud-Din Bin Husain,
 Department of Agriculture, Malaysia

Kazufumi Nishi, Nat Institute of Vegetables and Tea Science, Japan
 David Okioga, Ministry of Environment and Natural Resources, Kenya
 Marta Pizano de Marquez, Hortitecnia Ltda, Colombia
 Ian Porter, Institute for Horticultural Development, Australia
 Christoph Reichmuth, BBAGermany, Germany

John Sansone, SCC Products US
 Jim Schaub, US Department of Agriculture, US
 Sally Schneider, US Department of Agriculture, US
 Don Smith, Industrial Research Limited, New Zealand
 JL Staphorst, Plant Protection Research Institute, South Africa

Akio Tateya, Japan Fumigation Technology Association, Japan
 Robert Taylor, Natural Resources Institute, UK
 Alejandro Valerio, Department of Agriculture, Argentina
 Ken Vick, United States Department of Agriculture, US
 Nick Vink, University of Stellenbosch, South Africa
 Chris Watson, IGROX Ltd, UK
 Jim Wells, Novigen Sciences, Inc., International, US

Changing rules in the middle of the game

It is our view that rule changes implemented since Congress ratified the treaty have drastically changed the intent and operation of the treaty.

Congress ratified the Montreal Protocol treaty with an understanding about the details of the agreement. Yet, year after year, Montreal Protocol committees have acted to change the rules, significantly altering the original intent of the treaty. When the United States Congress ratified the Montreal Protocol Treaty, it was with the understanding that there would be a stepped down phase-out.

The treaty architects foresaw that at the end of that phase-out period there would be industries for which technically and economically feasible alternatives would not be available. Those authors included language in the treaty that stated that for those industries, a critical use exemption would be available.

Despite what some Protocol parties and activists now claim, the treaty did not say the CUE's were to merely provide an additional glide path beyond the phase-out with the ultimate resolution being a complete elimination. That is not what the US negotiators agreed to nor is it what the U.S. Congress ratified.

Recommendations

Mr. Chairman, in your invitation to me to testify today you asked for advice on how the CUE process could be improved, and I am happy to do so.

1. The US government should trust CUE petitioners have provided honest, accurate data that support their request. Don't cut just for the sake of making a cut for political expediency. Then, when cuts are made, give stakeholders the opportunity to appeal.
2. Require that the US EPA publish the final CUE amounts for a year by the previous December 1. The 2006 CUE document was not published until January 30, 2006, even though the amounts were authorized by the Parties on July 1, 2005. Surely five months is sufficient time to publish such a document. The result of this delay was that users who had immediate need to use the compound were put in the position of not knowing if such use would eventually be shown to be legal according to the EPA. This

is unacceptable.

3. Shine more light on the international approval process. The US should not support or participate in meetings that cannot be conducted in public when vital US economic interests are at stake. The Parties' penchant for secrecy and undemocratic decision-making is unfair to U.S. farmers and food processors, and does not resemble any notion of honest policy making as we know it in this country.
4. Oppose attempts to change the rules in the middle of the game. Congress ratified the Montreal Protocol treaty with an understanding about the details of the agreement and all Parties should adhere to those details.
5. Insist that meetings be held in locations that are safe and reasonably convenient for US interests to attend, and are held on days that are not major US holidays. This should be easily achievable as the US provides one-fourth of the funds that pay for the meetings.
6. As the basis for reviewing and granting CUEs is based on the availability of alternatives, funding for research to develop effective and economical alternatives must be increased and the pace of research accelerated. Congress has appropriated more than \$140 million over the last few years to investigate alternatives, with very little to show for it.
7. Declare victory over ozone-depleting substances and stop this irrational pursuit of an unwarranted total elimination. The miniscule gains to be made will require the spending of disproportionate quantities of resources that could be better spent on other environmental challenges.

There are only two ways the current situation can be resolved – one pleasant and one ugly.

In the ugly scenario, proponents of total elimination will continue to push for cut after cut until US food and agriculture says "Enough!" We will insist the US oppose any further reductions. If that happens and the US government walks away from the treaty, it will be a contentious and bitter end to a process on which massive resources were spent.

The other possible scenario is for all the Parties to agree victory has been achieved - methyl bromide usage is the lowest it can practically and economically be. There can be lots of pats on the backs all around, and we all get on with issues that truly matter.

That concludes my testimony, Mr. Chairman. I would be happy to answer any questions you or other committee members may have.